

Q's and A's

**Q: Admiral Inman, what would be the best way to achieve a total exclusion of CIA and NSA records from the FOIA?**

**A: We believe that the best solution would be to amend the definition of agency in subsection 552(e) of the Act.**

Q: But Admiral Inman, wouldn't that have the effect of excluding CIA and NSA from the Privacy Act, since that Act uses subsection 552(e) for definitional purposes?

A: There is a way that a redefinition of agency in subsection 552(e) can be drafted so as to accomplish the purpose of removing CIA and NSA from the FOIA without affecting the Privacy Act or other statutes which also happen to use subsection 552(e) for definitional purposes. I would be pleased to supply this formulation to the Committee as a drafting service.

Q: Admiral Inman, has the Administration taken a position on your proposal for a total exclusion from the FOIA?

A: As of this date, our proposal for a total exclusion for the CIA and NSA from the FOIA is at the Office of Management and Budget awaiting an Administration position.

Q: Admiral Inman, if the CIA and NSA are totally excluded from the FOIA, where is the accountability necessary to ensure that intelligence activities are being carried out in compliance with the law and the Constitution?

A: It is my belief that the Congressional oversight committees with their extensive authority to investigate our activities, along with the Executive branch review mechanisms, are the only proper means to ensure compliance with the law and the Constitution.

Q: Admiral Inman, what would happen to CIA or NSA documents in the hands of other agencies which might be surfaced in response to FOIA requests directed at these other agencies? Under the current system these documents are referred back to CIA and NSA for a determination as to whether they are releasable.

A: We would propose to exclude documents created or maintained by the CIA or NSA from the Act. This would mean that any CIA or NSA document in the hands of another agency would not fall within the Act and would not be referred back to the originating agency.

Q: Admiral Inman, if the Congress were to enact a total exclusion of CIA and NSA records from the FOIA what changes, if any, do you feel would be appropriate in the Privacy Act?

A: I see no need to change or amend the Privacy Act. The current provisions of the Privacy Act strike a reasonable balance between the rights of American citizens to have access to Government records pertaining to them and the need for the Government to protect sensitive national security information. Even if CIA and NSA records were totally exempt from the FOIA, the rights of U.S. persons under the Privacy Act will remain the same.

**Q: Admiral Inman, how would you propose to deal with pending FOIA requests and court cases if the Congress were to enact a total exclusion of CIA and NSA records from the FOIA?**

**A: The proposed amendment would apply to all pending requests for records and to any cases pending before the courts on the effective date of the amendment. CIA and NSA could, however, as a matter of administrative discretion, decide to complete the processing of any request which had been substantially completed.**



Q: Admiral Inman, by totally excluding CIA and NSA records from the FOIA, and by applying that Amendment to pending requests and court cases, are you not stripping American citizens of their rights?

A: No. Congress granted people the ability to gain access to certain Governmental records, and Congress may, in its discretion, limit that access where it deems it necessary for purposes of national security or otherwise.

Q: What if a historical society or a historian wishes to see CIA or NSA material that is of historical interest? Would your amendment forever bar that from happening?

A: No. CIA and NSA would still be subject, as are other federal agencies, to the government requirements of mandatory declassification review. If at the time of such review the materials sought were declassified, they could be made available.

Q: Admiral Inman, isn't S. 1273 identical to H.R. 7056, which was your proposal for legislative relief from the FOIA in the last Congress? Would you please explain why the Agency has changed its position and is now seeking a total exclusion from the FOIA.

A: While S. 1273 and H.R. 7056 are virtually identical, the position of CIA on relief from FOIA has not changed. CIA has always believed that only by totally exempting itself from the FOIA could the Agency obtain real relief from the Act. However, the Carter Administration would not support that position; the Carter Administration would only go as far as supporting the relief contained in H.R. 7056, and consequently, that bill became the Agency's bill. CIA's position has not changed. What has changed is the extent of support we have been told we would receive from the current Administration.

**Q: Admiral Inman, is it accurate to say that S. 1273 would encompass most, if not all, files of the DDO?**

**A: Yes, we believe that under S. 1273 it would no longer be necessary to search and review the files of the DDO for disclosable information except in response to a request by a United States citizen or permanent resident alien for information concerning themselves.**

Q: Mr. Casey, how do the provisions of S. 1235 compare with those of S. 1273?

A: S. 1235 amends the Freedom of Information Act itself by strengthening existing exemptions, adding new exemptions, allowing the denial of an entire document if "any portion" is exempt from disclosure, and removing federal court jurisdiction to order the disclosure or enjoin withholding of any information.

S. 1273 amends Section 6 of the Central Intelligence Act of 1949 to provide the Director of Central Intelligence the authority to designate certain categories of files as exempt from search or review and disclosure in furtherance of the DCI's responsibility to protect intelligence sources or methods. By specifically removing the requirement to search and review exempted categories of files, this Bill addresses the burdensome administrative problems and the perception problem facing the CIA. This Bill would also preclude judicial review of exempted files except for denials in response to first-person requests from U.S. citizens or permanent resident aliens.

**Q: Admiral Inman, how does your proposal for a total exclusion of CIA and NSA from the Act and Senator Chafee's bill compare with the FBI's proposal for relief from the FOIA?**

**A: Our proposal for a total exclusion and S. 1273 both preclude the necessity to search and review files containing sensitive national security information. The FBI proposal does not contain any similar provisions.**

Q: Admiral Inman, it is generally known that the Justice Department is working on a government-wide package of relief from the FOIA. Have there been any discussions between the CIA and/or NSA and the Attorney General concerning your proposal for a total exclusion from the Act? If so, what has been the result of these discussions?

A: Yes, there have been discussions and correspondence between the CIA and the Department of Justice in response to their request for our views on necessary amendments to the FOIA. As a result, we feel the Justice Department has a clear understanding of the problems facing these two intelligence agencies under the FOIA.

**Q: Admiral Inman, what precisely are you seeking to protect?**

**A: We are trying to protect the Nation's two most sensitive intelligence agencies, which necessarily operate in secret, from the unreasonable burden of attempting to find, isolate and release bits of non-secret information. We are attempting to protect these vital intelligence agencies from a process that requires the substantial participation of senior intelligence officers, but that produces little of benefit to American citizens. We are trying to protect against mistakes, and against the perception among sources that we cannot protect our secrets. In sum, we are seeking to protect this Nation against an unnecessary weakening of its intelligence capability.**



**Q: Admiral Inman, do you feel that the FBI should also be totally excluded from the requirements of the FOIA?**

**A: I believe that question is one which should be answered by Director Webster since he would be most knowledgeable about the particular problems facing the Bureau.**

**Q: Are the FBI's FOIA problems the same as the CIA's and NSA's?**

**A: While the FBI and CIA both have experienced difficulties in complying with the Act's deadlines and assuring sources of the confidentiality of their information, there are inherent differences between the missions of a domestic law enforcement agency and an intelligence agency operating abroad. These differences result in these agencies experiencing many different problems which require different legislative approaches and solutions.**

Q: Admiral Inman, can you provide us with an example of an FOIA request that illustrates some of the problems you have been talking about today?

A: Yes, I can. CIA currently is processing a request from one foreigner who has asked for documents that include two Top Secret documents, a Secret National Intelligence Survey and other documents amounting to about 120 pages. We estimate that it will require 250 manhours to complete this request. After all that, it is unlikely that this foreign requester will receive any significant, substantive information. It will have cost our taxpayers approximately \$3,000.

Q: Admiral Inman, has the CIA or NSA ever lost a court case which resulted in the disclosure of information the CIA and NSA felt should be withheld?

A: No we have not. However, in a recent case, the U.S. District Court for the District of Columbia, in a decision upheld by a panel of the Court of Appeals, ordered the release of portions of documents which are properly classified. While we are seeking to get this decision overturned, we will always be subject to the risk, so long as we are subject to FOIA, that a court will overrule the classification determinations made by intelligence experts.

Q: Admiral Inman, could you give this Committee the name of that case?

A: Yes. It is captioned Holy Spirit Association for the Unification of World Christianity v. CIA.

**Q: Admiral Inman, can you give us any instances wherein sensitive information has been released as a result of human error?**

**A: Yes, if the Committee is willing to meet in executive session. But let me say here that I believe that NSA and particularly CIA, because of the massive number of documents which are being processed under the FOIA and because of the number of people involved in this process, are always at risk that classified information will be inadvertently released. As a result of the painstaking efforts of many dedicated CIA employees, however, there is very little that we have mistakenly released under FOIA. (See Classified Damage Assessment Tab.)**

Q: Admiral Inman, can you give us some examples of fragmentary information released under the FOIA which has been misleading to the general public?

A: Yes. The American Palestinian Committee wrote to the Agency asking for all information involving the 1967 Israeli attack on the USS Liberty. Both evaluated and unevaluated data were made available. Subsequently, we learned that the American/Palestinian Committee was intending to publish only those raw reports which bolstered their contention that Israelis deliberately and without provocation attacked the ship, even though this information was in direct contradiction to the evaluated report. This case is representative of a situation wherein it is possible for a requester to selectively publicize information to reinforce and to deliberately misinform the public.

Sometimes only the fact that CIA has a file on a person or a subject matter leads to misleading conclusions. In one specific case, that of Dr. Tom Dooley, who is noted for his work in Africa, the fact that CIA had 55 documents on him was sufficient to lead some of the press to the wrong conclusion that Dooley was a CIA agent. In mid-1979 articles appeared in the press carrying titles such as "Dr. Dooley's Ties to the CIA are Chronicled" and "Cloud Hangs Over Legacy of Dooley."

**Q: Admiral Inman, are you aware of the release of a CIA document claiming an Israeli nuclear capability?**

**A: I would be happy to discuss that situation with you in executive session.**

**(See Classified Damage Assessment Tab for background on this release and a copy of the document.)**



Q: Admiral Inman, I wonder if you could compare for us the man-years expended in FOIA compliance at CIA with the man-years expended on some key intelligence targets.

A: As a matter of fact we have done just such a study for fiscal year 1980. I would be happy to share it with you in executive session or to forward the figures to you in a secure fashion. Let me say, however, that this study was quite disturbing to me. (See Classified Damage Assessment Tab for a copy of this study.)

Q: What would happen if this Congress did not pass any remedial legislation?

A: We will continue to engage in a needless expenditure of Government resources, both manpower and money. In addition, we will continue to run the risk that human error could result in disclosure of information that should be protected. The public will continue to receive raw unevaluated intelligence data plus documents that have been heavily excised and taken out of their original context. The result will be that on occasion misleading information will be released to the public. Moreover, since we have come forward publicly asking for relief, a message would be sent to those who cooperate with us, but it would not be the message we hope for.

Q: Admiral Inman, what is the position of the CIA on relief for the Defense Intelligence Agency from the FOIA? Why have you not included DIA in your request for a total exemption?

A: As a member of the Intelligence Community, the DIA has also been faced with difficulties in complying with the FOIA, and clearly, in my judgment, should get relief as well. However, given the unique sensitivity of CIA and NSA sources, a total exclusion is clearly appropriate for those agencies.

**Q: Admiral Inman, you stated that the CIA has been involved in 198 FOIA cases. How many FOIA cases are currently being litigated?**

**A: The Agency is currently involved in 90 FOIA-related cases.**

**Q: Admiral Inman, does the CIA currently have a backlog of FOIA requests?**

**A: Yes, we do. The annual report for calendar year 1980 states that 1,182 FOIA cases were carried over from CY 1979.**

**Q: Admiral Inman, if the CIA is granted a total exclusion from the FOIA would basic unclassified reference materials still be make available to the public?**

**A: Yes, such materials would still be available through the Library of Congress (DOCEX), Department of Commerce (NTIS), the Government Printing Office, and the Federal Depository Library Program.**

Hearings from  
96th Congress